

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Engineering

**AGENDA DATE:** June 15, 2010

**CONTACT PERSON/PHONE:** R. Alan Shubert, City Engineer (541-4423)

**DISTRICT AFFECTED:** 5

**SUBJECT:**

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a contract of sale for the purchase of a small portion (297 s.f.) of a larger privately-owned parcel (2.278 acres, more or less) since an encroachment by a City-installed sidewalk has been identified.

**BACKGROUND / DISCUSSION:**

A portion of the larger parcel located at the corner of Lee Boulevard and Turner Street was purchased as right-of-way for the 2005 Lee Blvd. improvement project. Less than a year later, Turner Street was also widened and improved by the City of El Paso. However, the widening impacted the corner alignment at Lee and Turner streets, resulting in the small encroachment upon private property. The sidewalk curvature was not built in to the design of the Turner project specifications. The purchase price being presented for consideration today is \$17,000, a negotiated settlement value that is recommended by Engineering and its legal counsel. The owners are prepared to move forward immediately to closing.

**PRIOR COUNCIL ACTION:**

Mayor and Council authorized the purchase of right-of-way for the widening of Lee Blvd in 2003 & 2004 and the initial funding agreement with TXDOT for the roadway widening in March 2000.

**AMOUNT AND SOURCE OF FUNDING:**

This expenditure is funded through FY 2003 Certificates of Obligation for Lee Blvd. widening project. No budgetary adjustments are required. Funding source is as follows:

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PPW0023	60622	31260001	508000

**BOARD / COMMISSION ACTION:**

(N/A)

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

DEPARTMENT HEAD: \_\_\_\_\_



*Informational copy to appropriate Deputy City Manager*

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Contract of Sale between the **CITY OF EL PASO** and **R. L. BOWLING, III**, and **PAULETTE BOWLING** for the purchase of the following property at the corner of Lee Boulevard and Turner Road for SEVENTEEN THOUSAND and 00/100 DOLLARS (\$17,000.00) as part of a negotiated settlement:

A 297 square foot parcel of land in Lot 3, Block 1, Las Palmas Unit 4, an Addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

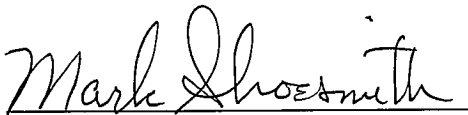
THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Mark Shoesmith  
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E.  
City Engineer

# Barragan & Associates Inc.

Land Planning & Land Surveying

10950 Pellicano Dr., Building "F", El Paso, Texas 79935 Ph. (915) 591-5709 Fax (915) 591-5706

## METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Lot 3, Block 1, Las Palmas Unit 4, an addition to The City of El Paso, El Paso County, Texas, according to the map thereof on file in volume 78, page 41, Plat Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows:

**COMMENCING** for reference at an existing city monument at the intersection for the centerline of Confederate Drive and the monument line of Turner Road; **THENCE**, N 86°26'31" W, a distance of 555.80 feet to a point on the Northerly right-of-way line of Turner Road for the Southeasterly corner of said Lot 3, Block 1, Las Palmas Unit 4, **THENCE**, N 90°00'00" W, along said Northerly right-of-way line of Turner Road, a distance of 349.47 feet to a set 5/8" rebar with cap stamped "B&A" for the **POINT OF BEGINNING** of this description:

**THENCE**, N 90°00'00" W, continuing along said Northerly right-of-way line of Turner Road, a distance of 34.17 feet to a set nail on the Easterly right-of-way line of Lee Boulevard;

**THENCE**, along said Easterly right-of-way line of Lee Boulevard, 13.74 feet along the arc of a non-tangent curve to the right, with a radius of 48.00 feet, an interior angle of 16°24'12", and a chord which bears N 08°45'18" W, a distance of 13.70 feet to set 5/8" rebar with cap stamped "B&A";

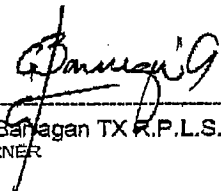
**THENCE**, N 00°33'12" W, continuing along said Easterly right-of-way line of Lee Boulevard, a distance of 29.52 feet to set 5/8" rebar with cap stamped "B&A";

**THENCE**, 20.57 feet along the arc of a non-tangent curve to the left, with a radius of 60.00 feet, an interior angle of 19°38'51", and a chord which bears S 10°22'38" E, a distance of 20.47 feet to set 5/8" rebar with cap stamped "B&A";

**THENCE**, 42.64 feet along the arc of a curve to the left, with a radius of 35.00 feet, an interior angle of 69°47'57", and a chord which bears S 55°06'02" E, a distance of 40.05 feet to the **POINT OF BEGINNING** of this parcel, containing in all 297 sq. ft. or 0.01 acres of land more or less.

### NOTES:

1. A Plat of Survey of even date accompanies this description.
2. This property may be subject to easements whether of record or not.
3. Bearings recited herein are based on the filed plat for Las Palmas Unit 4.
4. Indicated set points may not have been set as of this date. All corners will be set as indicated only upon final approval for acquisition if agreed upon by grantor and grantee. Any changes will be noted on revised final Plats of Survey and Written Descriptions.

  
Benito Barragan TX R.P.L.S. 5615, May 19, 2010  
LEE-TURNER

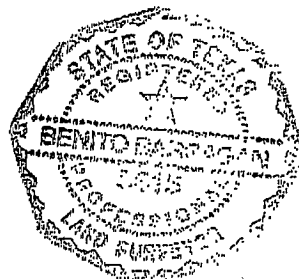
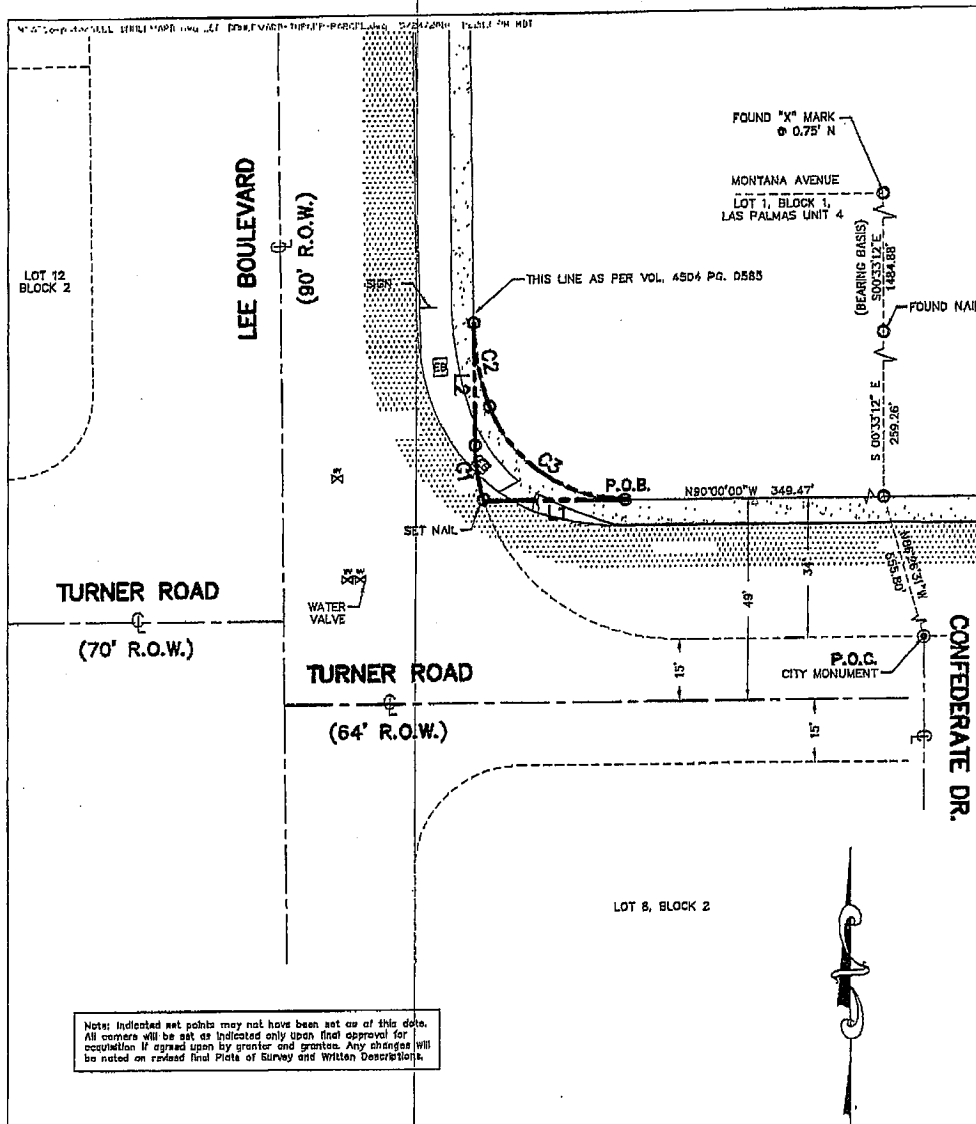


EXHIBIT "A"



Notes: Indicated set points may not have been set as of this date. All corners will be set as indicated only upon final approval for occupation if agreed upon by grantor and grantee. Any changes will be noted on revised final Plat of Survey and Written Description.

#### NOTE

1. SUBJECT PROPERTY SHOWN HEREON APPEARS TO BE LOCATED IN ZONE "C", PER F.I.R.M. PANEL NUMBER 37 B, LAST REVISION DATE 10-15-82. THIS SURVEYOR MAKES NO GUARANTEES AS TO THE ACCURACY OF THE ABOVE INFORMATION. THE LOCAL F.E.M.A. AGENT SHOULD BE CONTACTED FOR VERIFICATION.
2. BEARINGS SHOWN ARE BASED ON THE FILED PLAT FOR LAS PALMAS UNIT 4.
3. THIS PROPERTY MAY BE SUBJECT TO EASEMENTS WHETHER OF RECORD OR NOT, (NOT SHOWN).
4. THE PROPERTY OWNERS ARE SOLELY RESPONSIBLE FOR COMPLYING WITH ALL TITLE COMMITMENT PROVISIONS AND CONFIRMING THE SIZE AND USE OF ALL RECORDED EASEMENTS PERTAINING TO THIS PROPERTY, IN SPITE OF THE ACCURACY OR DEFECTS OF THIS PLAT.
5. SET 5/8" REBAR WITH CAP STAMPED "B&A" AT ALL CORNERS UNLESS NOTED OTHERWISE.
6. A WRITTEN DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N90°00'00"W	34.17'
L2	N00°33'12"E	28.52'

CURVE TABLE					
CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHORD
C1	13.74'	48.00'	8.82'	18°24'12"	13.70'
C2	20.57'	60.00'	10.39'	18°38'51"	20.42'
C3	42.84'	35.00'	24.42'	68°47'37"	40.05'

**Barragan & Associates Inc.**

**LAND PLANNING & SURVEYING**  
10950 Pellicano Dr., Building-F,  
El Paso, TX 79935  
Phone (915) 591-5709 Fax (915) 591-5705

## Plat of Survey

A PORTION OF  
LOT 3, BLOCK 1,  
LAS PALMAS UNIT 4,  
AN ADDITION TO THE  
CITY OF EL PASO,  
EL PASO COUNTY, TEXAS.  
AREA 297 SQ. FT.  
OR 0.01 ACRES ±

Plat Reference Vol/Bk 78 Pages 41  
Scale: 1"=30' Date: 05-19-10 Drawn By: RV

I hereby certify that the foregoing survey was made on the ground and under my supervision and is true and correct to the best of my knowledge and belief.



Barragan & Associates Inc. R.P.L.S. No. 5815

Job No. 100519-10 Copy Rights ©

EXHIBIT "A"

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

CONTRACT OF SALE

This Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between the CITY OF EL PASO, hereinafter referred to as the "City," and R. L. BOWLING, III, and PAULETTE BOWLING, hereinafter collectively referred to as the "Seller."

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.     Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

A 297 square foot parcel of land in Lot 3, Block 1, Las Palmas Unit 4, an Addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes; and

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway, street or alley, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property."

2.     Amount of Payment of Purchase Price and Additional Consideration. The purchase price for the Property shall be a total of SEVENTEEN THOUSAND and 00/100 DOLLARS (\$17,000.00). The consideration recited herein represents a release of all claims related to the Property and a settlement and compromise by all parties as to the value of the Property herein conveyed in order to avoid litigation and the added expense of litigation.

2.1    Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3.     Conditions to City's Obligations. The obligations of the Seller hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1    Title Insurance. Within ten (10) working days after the date of execution of this Agreement, the City at its expense will order a title commitment ("Commitment"), accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.2    Title Objections. The City will give the Seller written notice on or before the expiration of ten (10) working days after the City executes this Agreement and receives a current

Title Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller must either (i) promptly eliminate or modify all unacceptable matters to the reasonable satisfaction of the City; or (ii) notify City in writing of any of the objections raised by City that Seller cannot or will not cure. If Seller notifies City in writing that Seller cannot cure the objection, City shall have 5 days from receipt of the written notice within which to terminate this Contract or City will be deemed to have waived its objections to title except for those objections relating to outstanding liens against the Property. The City has no obligation under this paragraph or elsewhere in this Agreement to object to such liens, and the City has no obligation to close unless such liens are removed in their entirety as a condition to the Closing.

4. Representations and Warranties of Seller. The Seller hereby represents, covenants, and warrants to the City, as follows:

4.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. No person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the best of Seller's knowledge and belief, (i) No action has been taken, suffered or permitted by or on behalf of the Seller, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

4.4 Litigation. To the best of Seller's knowledge and belief, there is no pending litigation or litigation contemplated by Seller before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or property and no third party has threatened any such litigation.

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance With Law. To the best of Seller's knowledge and belief, the Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision, including any environmental issues related to the Seller's activities thereof.

4.7 Taxes. No state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The Seller agrees to pay the prorated taxes due on the Property for the year 2010, through the date of Closing.

4.8 Pre-Closing Claims. To the best of Seller's knowledge and belief, there are no pending or threatened claims being made by any third person or entity against Seller arising from or connected with the use of the Property or its present or past condition.

(a) The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing.

(b) The Seller agrees to indemnify and hold the City harmless from and against any and all claims, injuries, liabilities, losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property that accrued prior to and arising from events that occurred prior to the date of Closing, and of which Seller has actual knowledge as of the date of Closing, and arising from any of the following: (i) testing or inspection obligations required by federal or state environmental agencies, including without limitation any required after the date of Closing; (ii) pending environmental investigations or cases by the Texas Commission on Environmental Quality known to the Seller; or (iii) the acts or omissions of the Seller on the Property. The Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

4.9 Authority. The Seller has full right, power and authority to convey the Property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and indefeasible title to a fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other encumbrance on the Property without the prior written consent of the City.

4.12 Knowing Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) a knowing breach of any representation or

warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Seller made in this document, including without limitation any indemnity obligations, shall survive the execution and delivery hereof and of the Deed as well as the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms, if and as applicable, or shall have been discharged in full.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Stewart Title of El Paso, 415 N. Mesa, El Paso, Texas 79901, or another Title Company of City's choosing (the "Title Company"). The Closing shall occur on or before ten (10) days after the City Council has approved this Agreement, unless more time is needed to obtain clear title, in which case the City may unilaterally extend the Closing for an additional thirty (30) days.

5.1 Real Property Taxes. The Seller agrees to pay any past due taxes on the Property. Seller agrees to pay the taxes due on the Property for the year 2010, prorated through the day of closing.

5.2 Closing Costs.

(a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.

(b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.

(c) Escrow fees, if any, shall be paid by the City.

5.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

5.4 Other Obligations. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

5.5 Special Provisions. Seller shall remove Seller's personal property, if any, from the Property before closing.

6. Default.



6.1 Breach by Seller. In the event that the Seller shall fail to fully and timely perform any of Seller's obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement, as its sole and exclusive remedy. Notwithstanding the foregoing, this limitation of liability does not apply to Seller's breach of Seller's representations under paragraph 4.12 above.

6.2 Breach by City. In the event that City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive \$1,000.00 as independent consideration plus the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Agreement, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the Seller agrees to accept and take such cash payment as Seller's total, reasonable damages and relief and as the Seller's sole, exclusive remedy hereunder in such event. Notwithstanding the foregoing, if City fails to consummate the sale based upon City's default under the terms of this Contract, Seller shall retain any and all of its rights and causes of action against the City pertaining to the Property which Seller had prior to entering into this Agreement.

7. Miscellaneous.

7.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Seller:	R. L. Bowling, III 4655 Cohen El Paso, Texas 79924	Copy to: Dennis D. Healy 501 Executive Center Blvd., Suite 101 El Paso, Texas 79902
City:	City Manager City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196	Copy to: Risher S. Gilbert 201 E. Main Street, Suite 1501 El Paso, TX 79902

8. Entire Agreement/Governing Law. **This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.**

8.1 Time. Time is of the essence of this Agreement and each and every provision hereof.

8.2 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

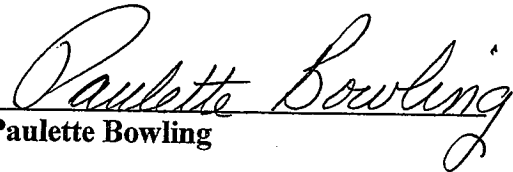
8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this Contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City or its representatives is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

**SELLER:**

  
Robert L. Bowling III

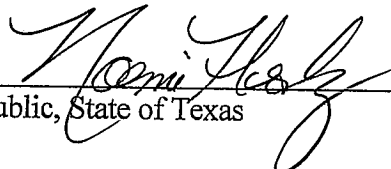
  
Paulette Bowling

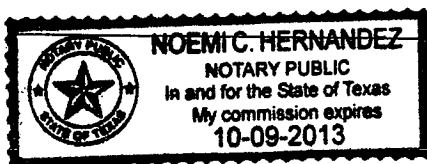
**ACKNOWLEDGEMENT**

STATE OF TEXAS     )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 7 day of June, 2010 by Robert L. Bowling III and Paulette Bowling.

My commission expires:

  
Notary Public, State of Texas




EXECUTED by the City of El Paso to be effective as of the \_\_\_\_ day of \_\_\_\_, 2010.


**CITY OF EL PASO**

By: \_\_\_\_\_  
Joyce Wilson  
City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mark Shoesmith  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Alan Shubert  
City Engineer  
Development & Infrastructure Services

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_, 2010 by Joyce Wilson, City Manager of the City of El Paso.

My commission expires:

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## Barragan & Associates Inc.

Land Planning & Land Surveying

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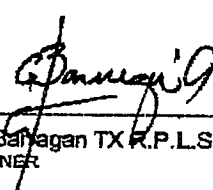
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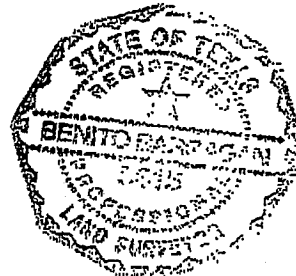


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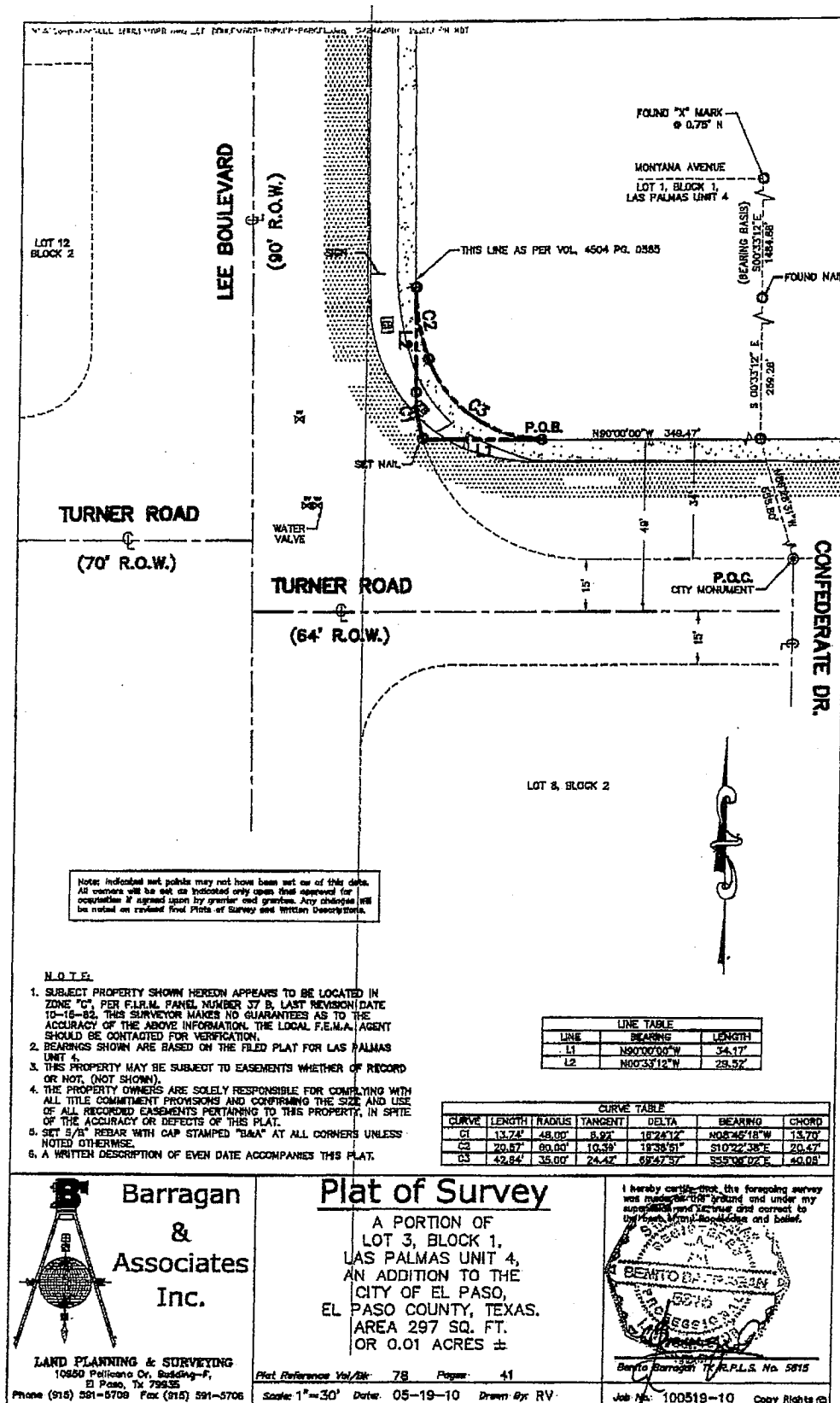


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